

OBJECTIVE 1.1 Identify statutory law, case law, agency policy, and principles of liability governing non-emergency driving.

INTRODUCTION

All traffic laws that govern the general public apply with equal force to on-duty law enforcement officers in non-emergency driving. NO state gives its law enforcement officers authority to disregard all traffic laws in performing emergency services.

CONTENT

Non-emergency driving is all law enforcement driving that does not comply with the provisions of emergency exemption statutes. Typical emergency exemption statutes have two primary requirements: (1) warning lights and/or a siren must be activated; and (2) the officer must be engaged in enforcing the law. If warning devices are not activated, or if the officer is not enforcing the law, the emergency exemption statute does not protect an officer.

Negligence is the failure to use reasonable care. Drivers who are negligent and cause an injury to another may be required to pay money damages to the injured person. That is civil liability. The branch of law that deals with civil liability is called tort law. Officers involved in accidents during non-emergency driving may be responsible for damages under negligence tort law.

Many states give a limited immunity to governmental units and governmental employees against negligence law suits arising out of governmental activities. Governmental immunity means a lawsuit for money damages will not be allowed even though the governmental employee is admittedly negligent. Governmental immunity has been substantially abolished in some states, and restricted in many others. Some states allow negligence claims against a city or county if the negligence involved operation of a motor vehicle. Some states grant immunity for negligence, but not for "willful and wanton" or "outrageous" misconduct.

In the following case, the issue is whether or not a traffic patrol officer is entitled to governmental immunity against a negligent driving claim.

Case One: The Inattentive Traffic Officer

CITY OF WAKARUSA v. HOLDEMAN, 582 N.E.2d 802 (Indiana Sup.Ct. 1991)

Officer A was checking for invalid registration tags in an area where he recently cited a number of motorists for invalid registration. As he drove along a city street at 35 mph, Officer A looked in his outside driver's side mirror to check on cars as they passed in the opposite direction. Officer A did not notice that traffic in his travel lane had stopped until it was too late. He hit the rear of the car ahead of him.

The driver of the damaged car brought a civil law suit against Officer A and the city that employed him. The law suit alleged negligence - failure to use reasonable care under the circumstances. Under a rule of tort law called vicarious liability, an employer is also liable if an employee is negligent and causes the injury while working within the course and scope of employment. Both the city and Officer A would be liable if Officer A failed to use reasonable care while on patrol.

The Supreme Court of Indiana said:

"It is undisputed that a person operating a motor vehicle on a public roadway has a duty to operate such vehicle with reasonable care. A question of fact exists as to whether or not (Officer A) exercised such care under the circumstances."

The Indiana Supreme Court rejected Officer A's claim he was immune from a negligence law suit because he was on-duty and engaged in the enforcement of the criminal law at the time of the accident. The Indiana immunity statute is restricted to arrest activities, not general law enforcement activities like traffic patrol. The immunities statute does not prevent liability for "willful and wanton" negligence, or a possible jury verdict in this case.

Case Two: The Negligent Transportation Officer

AIKENS v. MORRIS, 145 Ill.2d 273, 583 N.E.2d 487 (1991)

A city officer in Illinois was transporting a prisoner from a neighboring town to a detention facility in his city. The officer was not in a hurry and was not using warning lights or sirens. The officer's car collided at an intersection with a car being driven by a lady who later filed a negligence law suit.

The officer claimed he was protected from civil liability under the terms of the Illinois immunity statute for governmental activity. Transporting a prisoner was an essential part of law enforcement activity and should be covered by governmental immunity, the officer claimed.

The Illinois Supreme Court rejected the officer's claim of immunity. The court noted the officer was not in an emergency since he did not activate warning lights or siren. The officer testified he was in "no hurry."

The Illinois immunity statute does not protect officers from negligent driving while transporting a prisoner. The statute prevents negligence liability only for conduct in the execution of enforcement of the law, which does not include transporting prisoners.

AGENCY POLICY

Many law enforcement agencies have standard policy manuals covering emergency and non-emergency driving. A typical written policy on non-emergency driving may require officers to obey all traffic laws and drive with due care at all times unless otherwise authorized by law or other provisions in the policy.

The written policy of an agency is a statement of rules set by the employer to guide officers in the performance of duty. Sometimes a rule in agency policy incorporates a rule of law. Some policy rules have nothing to do with rules of law. Many agencies have a policy rule prohibiting speeds over 15 mph above the posted speed limit while driving to the scene of a call. Speed exemption statutes prohibit unsafe speeds, but do not specify a maximum speed limit for emergency driving. Driving 16 mph in excess of the speed limit may violate agency policy but is not a violation of state law.

Violation of agency policy can lead to disciplinary action, including job loss. Even if state law is not violated, a violation of agency policy in many agencies is insubordination - failure to obey orders. Officers have been fired for violating policy related to emergency and non-emergency driving. Disciplinary action may be taken for violating agency policy even though the officer was not charged or convicted of violating state or local traffic law.

Even though agency policy is not law, a violation of agency policy may be evidence of negligence in a civil or criminal trial. Agency policy sets a standard of due care which a jury is entitled to consider. An injured party bringing a law suit will argue the officer's violation of agency policy shows a disregard for the safety of the public.

On the other side, the officer may try to minimize a violation of policy by offering evidence that many other officers violated the same policy on a regular basis without suffering any disciplinary action. Essentially, the officer claims the written policy is not followed in the field. That effort is not always successful. Agency written policy is powerful evidence in court if it appears an officer ignored it with disastrous consequences.

Case Three: Three Fatalities At An Intersection

STATE v. FLAHERTY, 55 N.C.App. 14, 284 S.E.2d 565 (1981)

A Charlotte N.C. officer responding to an "assist officer" call collided with a car at an intersection, killing three of the four occupants. The officer testified he was going 45 to 50 mph and had a green light as he approached an intersection. Other witnesses estimated his speed at 60 to 70 mph and said the officer had a red light on his travel lane.

The posted limit at the intersection was 35 mph. The Charlotte Police Department had a General Order prohibiting speeds more than 10 mph over the limit. The officer testified that officers routinely ignored this 10 mph speed cap when going to assist another officer. North Carolina's emergency exemption statute for speed did not have a maximum speed limit but did require officers to drive with due regard for the safety of others.

The officer was convicted of involuntary manslaughter and sentenced to three years in prison. The Court of Appeals reversed the conviction and ordered a new trial because of an error in jury instructions. To be guilty, the officer's driving must be in reckless disregard of the consequences, a higher standard than simple negligence. At trial after remand, the jury may conclude the officer was guilty of involuntary manslaughter even with a correct instruction on the law.

(After remand for a new trial, the officer pled guilty in exchange for a probated sentence instead of imprisonment.)

Usually agency policy restricts officers in the exercise of authority given by state law. But occasionally agency policy fails to consider the requirements of state law. In many states, emergency warning equipment must be activated to claim the emergency exemption from speed or right-of-way laws. Agency policy that authorizes speeding over the limit without activating required emergency equipment cannot justify a violation of the statute. A policy of responding to a robbery in progress without activating emergency equipment while violating traffic laws may expose the agency and officer to liability.

Case Four: Silent Run Policy Violates The Law

BROWN v. KREUSER, 38 Colo.App. 554, 560 P.2d 105 (Colo. Ct.App. 1977)

Officer A was dispatched to a robbery in progress. Although the officer was exceeding the speed limit, he did not activate warning lights or siren. A lady pulled out of a parking lot and made a left turn across the officer's travel lane. The officer collided with the lady, who sued for damages.

At trial, the lady claimed she saw Officer A's car but did not realize he was driving so fast since none of his emergency equipment was operating.

A departmental policy required officers to drive without activating warning lights or siren in responding to a crime in progress. Officer A tried to get the silent run policy admitted into evidence at his civil liability trial but the trial court refused to allow its admission.

On appeal following a jury verdict for the lady, the officer claimed the trial court committed reversible error when it refused to permit the jury to consider the silent run policy. The Colorado Court of Appeals affirmed the trial court's exclusion of the silent run policy and allowed the jury verdict to stand.

The court said:

"Exclusion of this testimony was not error as such a policy could not supersede either the city traffic ordinance or state statutes. Since (the officer) was not using his lights and siren, ... he was subject to all the same traffic provisions as all other drivers... and his reasons for exceeding the speed limit were immaterial with respect to the issue of negligence."

SUMMARY

All traffic laws that govern the general public apply with equal force to on-duty law enforcement officers in non-emergency driving. NO state gives its law enforcement officers authority to disregard all traffic laws in performing emergency services. Typical emergency exemption statutes have two primary requirements: (1) warning lights and/or a siren must be activated and (2) the officer must be engaged in enforcing the law. If warning devices are not activated, or if the officer is

not enforcing the law, the emergency exemption statute does not protect an officer from civil liability.

SUGGESTED INSTRUCTIONAL METHODOLOGY

LECTURE WITH SLIDES

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

LECTURE AND CLASS DISCUSSION

Utilize case summaries to present legal principles and involve students in discussion of relevant issues

SMALL GROUPS WITH CASE STUDIES

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

RESOURCES AND AIDS

1. Relevant state statutes.
2. Agency policies.

SUGGESTED EVALUATION METHODOLOGY

STUDENTS

1. Written or verbal response to questions regarding legal principles.
2. Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios.

COURSE

1. Observe the driving of officers during the simulations of emergency vehicle operations.
2. Review agency collision reports for failure to heed legal considerations.